

IN THE  
UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF: BENDINER, Bernard

DOCKET NO.: 5565-4

SERIAL NO.: 09/721,586

FILED ON: November 22, 2000

FOR: Preservative for Organic Materials

TO: ASSISTANT COMMISSIONER OF PATENTS  
WASHINGTON, D.C. 20231

) Art Group Unit: 1615  
)  
) Examiner:  
)  
) Petition Under 37 CFR 1.47(b)  
)  
)  
)

Dear Sirs:

- [X] AUTHORIZATION TO PAY AND PETITION FOR THE ACCEPTANCE OF ANY NECESSARY FEES: If any charges or fees must be paid in connection with the following Communication (including but not limited to the payment of issue fees), they may be paid out of our deposit account No. 12-0064. If this payment also requires a Petition, please construe this authorization to pay as the necessary Petition which is required to accompany the payment.
- [X] Applicant herewith petitions the Commissioner of Patents and Trademarks to extend the time for response to the Notice to Missing Parts of Reissue Application dated December 13, 2000 for three (3) month(s) from February 13, 2001 to May 13, 2001. Submitted herewith is check No. \_\_\_\_\_ for \$445.00 to cover the cost of the extension. If a check is lost, or otherwise does not accompany this Petition, please charge my deposit account number 12-0064 in the appropriate amount to cover the cost of the extension. Any deficiency or overpayment should be charged or credited to the above numbered deposit account.

**PETITION UNDER 37 CFR 1.47(b)**

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner of Patents, Washington, D.C. 20231 on:

Date: May 14, 2001

Signature: [Signature]  
Print: Joyce Post

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Petition Under 37 CFR 1.47(b)

The U.S. Patent and Trademark Office has issued a Notice to File Missing Parts in connection with this application, and the Notice requires Preservation Products to supply a signed inventor's declaration. Preservation Products, LLC ("Preservation Products") now petitions under 37 CFR 1.47(b) for a decision allowing Assignee Preservation Products to make an application for reissue on behalf of and as agent for the inventor, Bernard Bendiner, who refuses to sign the reissue application declaration.

I. Preservation Products Has A Proprietary Interest

On November 24, 1998, U.S. Patent 5,840,249 titled "Preservative for Organic Materials" ("249 patent") was issued to inventor Bernard Bendiner (a.k.a. Bernard Bud Bender). On April 8, 1999, Mr. Bendiner entered into an agreement stating that Preservation Products owns the "Wax Cellulose Fiber Technology" ("WCFT") and "several patents pending which utilize the [WCFT]", including the '249 patent. (Exhibit B, ¶12 and Exhibit 1 thereto at page 2, ¶1). On April 24, 1999, he executed an Assignment of the '249 patent, including the invention described therein, and "all continuations, divisions, renewals and extensions" of the '249 patent. (Exhibit A). On May 3, 1999, the U.S. Patent and Trademark Office recorded the Assignment of the '249 patent to Preservation Products at Reel 9942, Frame 0347. (Id.). This Assignment further provided that Mr. Bendiner would help Preservation Products make the applications for such patents. (Id.)

In light of those documents, Mr. Bendiner has an obligation to sign the declaration. As the Assignee of the '249 patent, Preservation Products has a proprietary interest in the '249 patent.

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II. The Inventor, Bernard Bendiner, Refused to Sign Declaration After  
Bona Fide Attempts By Preservation Products

Preservation Products filed a reissue application (application number 09/721,586) with the U.S. Patent and Trademark Office on November 22, 2000. Preservation Products made repeated bona fide attempts to obtain Mr. Bendiner's signature on the reissue application declaration by the inventor ("declaration") from November 2000 until May 2001. (Declarations of Donald C. Lindberg, Robert M. Winter, and Larry L. Saret attached hereto as Exhibits B, C, and D respectively). Mr. Bendiner, through his counsel, has been presented with a copy of the reissue application papers. (Exhibit C). Despite this, Mr. Bendiner has refused by conduct to sign the declaration. Thus, Preservation Products has demonstrated Mr. Bendiner's refusal to sign the declaration for application 09/721,586.

III. Preservation Products Will Suffer Irreparable Damage If The Petition Is Denied

Preservation Products, as owner of the '249 patent and of all rights in any extension of the '249 patent, will be irreparably damaged if it is prevented from pursuing a reissue of the '249 patent by Mr. Bendiner's unilateral decision to breach the contract he entered into when he assigned the '249 patent. This irreparable damage is due to the fact that the reissue application seeks to claim more than the original patent did and thus must receive a filing date on or before November 24, 2000 (two years after the '249 patent issued). Additionally, granting this petition is necessary to preserve the rights of Preservation Products to pursue any "extension" of the '249 patent, as expressly granted by Mr. Bendiner in Exhibit A.

IV. Mr. Bendiner's Last Known Addresses

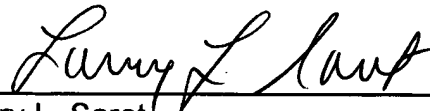
The last known address of inventor Bernard Bendiner is 326 Woodsedge, Suite B, Michigan City, Indiana, 46360. His counsel's address is F. David AuBuchon, Brinks Hofer Gilson & Lione, NBC Tower, Suite 3600, 455 North Cityfront Plaza Drive, Chicago, Illinois, 60611-5599.

Conclusion

Preservation Products respectfully requests that the USPTO accept this petition as fulfillment of the missing parts for Application 09/721,586.

Dated: May 14, 2001

Respectfully submitted,



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